

IC 28-1-9

Chapter 9. Voluntary Dissolution of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-9-1

Surrender of corporate rights before commencement of business; certificate of incorporators

Sec. 1. With the approval in writing of the department, the incorporators named in the articles of incorporation of any corporation organized under the provisions of this article may surrender the certificate of incorporation and all of the corporate rights and franchises of the corporation, at any time within one (1) year from the date of the issuance of the certificate and before the issuance of any of the shares of capital stock of the corporation and before the beginning by it of the business for which it was formed, by presenting to the secretary of state, at his office, accompanied by the fees prescribed by law, a certificate, in triplicate, signed and verified by the joint and several oaths of a majority of the incorporators, in the form prescribed by the secretary of state, showing that no shares of the capital stock of the corporation have been issued and that the amount, if any, actually paid in on the shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto, that such business has not been begun, that no debts remain unpaid, and that they surrender all rights and franchises.

(Formerly: Acts 1933, c.40, s.142.) As amended by P.L.263-1985, SEC.41.

IC 28-1-9-2

Authority to liquidate and dissolve; resolution; submission to shareholders; vote required

Sec. 2. Any bank, trust company, corporate fiduciary, savings bank organized after December 31, 1992, bank of discount and deposit, or savings association may liquidate its affairs and dissolve in the manner prescribed in this chapter. Whenever the board of directors, by a resolution adopted by a majority vote of the members of such board, shall deem it advisable to submit the question of dissolution, or whenever the board of directors shall be requested in writing by the holders of a majority of the outstanding shares of capital stock to submit the question of dissolution, the board of directors shall submit the question of dissolving the corporation to a vote of the shareholders of the corporation entitled to vote at such meeting as may be designated in such request, or, in the absence of such request or of such designation, in such resolution. The designated meeting may be an annual or a special meeting of the shareholders. If the designated meeting is an annual meeting, notice of the question of dissolution shall be included in the notice of the annual meeting. If the designated meeting is a special meeting of the shareholders, such special meeting shall be called by the board of directors, and notice of such meeting shall be given at the time and

in the manner provided in IC 28-13-14-6. The dissolution shall be authorized, subject to the provisions of section 3 of this chapter, upon receiving the affirmative votes of the holders of two-thirds (2/3) of the outstanding shares of stock of the corporation unless the corporation is a savings association authorized to dissolve by the provisions of this section, in which case the affirmative votes of the holders of a majority of the outstanding shares of stock shall be sufficient and dissolution shall thereby be authorized.

(Formerly: Acts 1933, c.40, s.143.) As amended by P.L.263-1985, SEC.42; P.L.14-1992, SEC.77; P.L.122-1994, SEC.78; P.L.262-1995, SEC.27; P.L.79-1998, SEC.42.

IC 28-1-9-3

Examinations; departmental approval of liquidation

Sec. 3. After the resolution submitting the question of dissolving the corporation shall have been adopted by the board of directors, such resolution shall be submitted to and shall be approved by the department before such resolution is submitted to a vote of the shareholders of such corporation. Upon the filing of such resolution, the department shall cause an examination to be made of the business and affairs of such corporation. If the department shall find, from such examination, that such corporation is solvent or that it has sufficient assets with which to pay all of its depositors and all of its other liabilities, it may enter an order in writing approving the dissolution of such corporation and authorizing the board of directors of such corporation to submit the question of dissolving such corporation to the shareholders, in the manner prescribed in this article. If the department shall find, from such examination, that such corporation is in an unsound or unsafe condition or has otherwise violated the provisions of IC 28-1-3.1-2, it may enter an order, in writing, disapproving of the voluntary dissolution of such corporation, and the department shall thereupon take possession of the business and property of such corporation and proceed to liquidate such corporation in the manner prescribed in and subject to the provisions of IC 28-1-3.1.

(Formerly: Acts 1933, c.40, s.144.) As amended by P.L.263-1985, SEC.43.

IC 28-1-9-4

Restrictions on dividends and business pending payment of debts and liabilities

Sec. 4. After the vote of the shareholders shall have been taken, as hereinbefore provided, no dividend or profits shall be paid to the shareholders, nor shall any part of the capital be withdrawn by or paid to the shareholders, in any manner whatsoever, nor shall such corporation transact any business whatsoever except such as may be necessary or incidental to its dissolution, until all of the debts and liabilities of the corporation of every kind are fully paid.

(Formerly: Acts 1933, c.40, s.145.)

IC 28-1-9-5

Liquidating agent; appointment; powers

Sec. 5. Upon the authorization of the dissolution by the shareholders, the board of directors, with the approval of the department, shall appoint one (1) or more liquidating agents, and their successors, designated as "agent" in this chapter, to act for and on behalf of the corporation, which agent shall have the power and authority to liquidate such corporation subject to such limitations as may be imposed by the board of directors not inconsistent with the provisions of this article. Such agent shall proceed to:

- (a) cause a notice that the corporation is about to be dissolved to be published once in a newspaper of general circulation in the county in which the principal office of the corporation is located;
- (b) dispose of all trust property as prescribed in section 7 of this chapter, and all property of the kind described in IC 28-1-3.1-14, in the same manner as a receiver is authorized to dispose of such property;
- (c) collect all of the corporate assets and, for that purpose, may bring all actions, in his own name, that are necessary;
- (d) enforce and collect, in his own name, the liability imposed by law upon shareholders, in the same manner and to the same extent as a receiver is authorized to enforce and collect such liability upon involuntary liquidation, as provided in IC 28-1-3.1-15;
- (e) pay and discharge all of the corporate debts and liabilities in the same manner as is prescribed for a receiver in IC 28-1-3.1-6; and
- (f) distribute the remaining corporate assets and property among the shareholders or such other persons as may be designated in the articles of incorporation, according to their respective interests, after the provisions of subdivisions (a) through (e) of this section shall have been fully complied with.

(Formerly: Acts 1933, c.40, s.146.) As amended by P.L.263-1985, SEC.44.

IC 28-1-9-6

Liquidating agent; authority

Sec. 6. (a) The agent shall have the right and authority to collect all debts, dues, claims, and demands belonging to such corporation, and upon order of the court wherein the statement of all debts and liabilities of such corporation shall have been or may be filed, and upon such terms and conditions as shall be fixed by such court, the agent may:

- (1) sell or otherwise dispose of all or any part of the assets and property, including real estate, at public or private sale after notice;
- (2) compound all bad or doubtful debts, dues, claims, and demands or sell or otherwise dispose of the same at public or private sale after notice; and

(3) compromise all claims and demands against such corporation.

(b) The agent may prosecute, defend, or participate in any and all actions which were pending against the corporation when he was appointed and may likewise defend any action instituted thereafter. The agent shall, in the name of the corporation and on its behalf, execute, acknowledge, and deliver all deeds, conveyances, assignments, releases, or other instruments necessary and proper to effect any sale, lease, or transfer of real estate or personal property or to carry into effect any power conferred or duty imposed by this article. All such instruments shall be sealed with the corporate seal. *(Formerly: Acts 1933, c.40, s.147; Acts 1935, c.5, s.24.) As amended by P.L.263-1985, SEC.45.*

IC 28-1-9-7

Trust and fiduciary property; disposition

Sec. 7. If, at the time of liquidation such corporation shall hold any property, real or personal, in trust for any individual or corporation under or by virtue of any trust instrument, the agent shall convey, assign, and deliver such property to the successor trustee named in the trust instrument under which such property is held, or if no successor trustee be named therein, to such individual or to a bank or trust company or corporate fiduciary that is qualified to exercise trust powers as may be designated in writing by the beneficiaries of such trust, or if no such designation is made after written notice to the beneficiaries, or if the beneficiaries are otherwise incompetent to designate a successor trustee, then to such individual or to such bank or trust company or corporate fiduciary that is qualified to exercise trust powers as may be appointed by the circuit, probate, or other court having jurisdiction of trusts in the county where the principal office of such corporation is located. No person eighteen (18) years of age or older shall be deemed incompetent by virtue of his age to name a successor trustee. If any such corporation, at the time of liquidation, shall be acting as administrator, executor, guardian, receiver or in any other fiduciary capacity under the appointment of any court, the agent shall convey, assign, and deliver all of the property of such trust and all of such trust business, to such individual or to such bank or trust company or corporate fiduciary that is qualified to execute trusts, as may be appointed by the court having jurisdiction of such trust, upon the order and direction of such court.

(Formerly: Acts 1933, c.40, s.148; Acts 1973, P.L.280, SEC.2.) As amended by P.L.262-1995, SEC.28.

IC 28-1-9-8

Petition of liquidating agent; statement of debts and liabilities; recommendations as to claims; suspension of creditor's right of action on claims

Sec. 8. Within sixty (60) days after such dissolution has been authorized by the shareholders, the agent shall file with the clerk of

the circuit, superior or probate court of the county in which such corporation has its principal place of business, a verified petition, in duplicate, which shall contain a complete statement of all debts and liabilities of such corporation, whether to creditors or shareholders setting forth the name and address of each creditor, and/or shareholder and the nature and amount of each claim, as disclosed by the books of such corporation, or otherwise coming to the knowledge of such agent, together with the recommendations of such agent as to the allowance or disallowance of such claims, but in making such recommendations, such agent shall not determine or recommend any preferences or priorities as to any claim or claims. The agent shall also file one (1) copy of such petition in the office of the department and retain one (1) copy thereof at the principal office of the corporation for inspection by creditors, shareholders or other persons interested. Upon the filing of such petition the same shall be docketed as a cause of action upon the records of the court wherein such petition is filed and thereupon such court shall be vested with exclusive jurisdiction to hear and determine all issues and matters pertaining to or connected with the allowance, disallowance and payment of claims against such corporation. No creditor or other person shall have any claim or any right to bring an action in any court upon any claim or to assert any right against such corporation after such dissolution has been authorized by the shareholders and before the date fixed for the filing of such petition with the clerk of such court.

(Formerly: Acts 1933, c.40, s.149.)

IC 28-1-9-9

Notice to creditors

Sec. 9. Upon the filing of such petition, the agent may, by mail, notify each creditor and/or shareholder whose name appears in the petition of the amount for which his claim was recommended for allowance, without priority, and shall, in such notice, specify the date that shall have been fixed by the court, not less than sixty (60) days from the date of such notice, within which all creditors and/or shareholders who may be dissatisfied with the recommendations of the agent as to the allowance or disallowance of claims may appear in court, and, by petition, assert their claims or any priorities thereon. At the same time the agent shall also give notice by publication, once each week, for three (3) successive weeks, in some newspaper of general circulation, printed or circulated in the county where the liquidation proceedings are pending that the petition and the recommendations as to the allowance or disallowance of claims has been filed with the court and specifying the date that shall have been fixed by the court, not less than sixty (60) days from the date of such notice, within which any creditors, shareholders or other persons interested, may appear, and, by petition filed in the court, assert any claims or priorities thereon or object to the allowances or disallowances recommended by such agent.

(Formerly: Acts 1933, c.40, s.150.)

IC 28-1-9-10**Creditor's petition asserting claim; priority or opposition to other claims; failure to appear; effect of liquidating agent's failure to petition**

Sec. 10. Within the time fixed by the notice, any creditor, shareholder or other person interested may, by verified petition filed in the court, assert his claim, or any priority thereon, or oppose the allowance, of any claims appearing upon the statement, or asserted by any other creditor or shareholder and the agent or any creditor, shareholder or other person interested, within such time as may have been fixed by the court, may oppose the allowance with or without priority of the claims asserted by any creditor or shareholder. The court may, upon good cause shown, extend the time for the filing of any petition or objection by any person for the allowance or disallowance of any claim herein referred to. Any creditor or shareholder who fails to appear and file his petition as is provided within the time fixed by the notice or by any extension granted by the court shall be forever barred from asserting any claim different from that recommended by the agent or from asserting any claim or priority, and from contesting or opposing the allowance, with or without priority, of any claim asserted by any creditor. If such agent shall not file a petition, as hereinbefore prescribed in this section, within sixty (60) days after the dissolution shall have been authorized, any creditor or other person asserting any claim against or any right, title or interest in and to the assets of such corporation may bring an action founded on such claim or other right in the circuit or superior court of the county in which the principal office of such corporation is located. If such petition shall have been filed on or before the date fixed for the filing of such petition with the clerk of the circuit, superior or probate court all creditors or other persons asserting any claim or other right against such corporation shall enforce such claim or other right pursuant to the provisions prescribed in this section and not otherwise.

(Formerly: Acts 1933, c.40, s.151.)

IC 28-1-9-11**Unclaimed distributive portions**

Sec. 11. In case depositors or other creditors or the holders of shares of any such corporation are unknown or shall fail or refuse to accept their distributive shares in the property and assets of such corporation, or are under any disability, or can not be found after diligent inquiry, the board of directors shall make a charge of not to exceed one dollar (\$1.00) against each account or claim for which no demand has been made. Proceeds arising from such charges shall be merged into the general assets of the corporation. Upon the final settlement of the liquidation the board of directors shall file at the office of the department in the state capitol building, a complete list of all distributive portions owing to depositors, creditors or owners of shares of stock, after deducting the charge above referred to, and deposit at the office of the department cash to cover such unpaid

balances. Such deposit shall have the same force and effect as if payment had been made directly to and accepted by the persons lawfully entitled thereto. The distributive portions so deposited shall be paid over by the department to such depositors, creditors or shareholders respectively, or to the lawful owners of such distributable portions, or to their respective legal representatives upon satisfactory proof being made to the department of their respective rights thereto. If any of the distributive portions so deposited with the department shall not have been claimed within a period of three (3) years after the date of such deposit, after the expiration of said period the department shall make a charge of not to exceed one dollar (\$1.00) against each of said claims remaining unpaid, as reimbursement for all costs arising in connection with the trust. The proceeds arising from such charges shall be paid into the state treasury and shall be credited to the financial institutions fund. Any balances remaining shall be paid to the general fund of the state treasury.

(Formerly: Acts 1933, c.40, s.152; Acts 1937, c.33, s.15.)

IC 28-1-9-12

Authority to borrow

Sec. 12. After the authorization of the dissolution of such corporation, the board of directors is hereby authorized to borrow money and to secure the payment thereof, in the same manner and to the extent that a receiver may borrow money and secure the payment thereof when any financial institution is in involuntary liquidation, as provided in IC 28-1-3.1-6.

(Formerly: Acts 1933, c.40, s.153.) As amended by P.L.263-1985, SEC.46.

IC 28-1-9-13

Articles of dissolution; execution and filing; contents

Sec. 13. Upon the completion of the dissolution, the corporation shall execute and file, in the manner hereinafter provided, articles of dissolution, setting forth the following:

- (a) The name of the corporation;
- (b) The place where its principal office is located;
- (c) The date of the meeting of the shareholders at which the dissolution was authorized, and a copy of the notices of such meeting;
- (d) A copy of the resolution of the shareholders authorizing the dissolution;
- (e) The manner of its adoption and the vote by which adopted;
- (f) A copy of the notice published as hereinabove provided;
- (g) The names and addresses of the then existing directors and officers of the corporation;
- (h) A copy of the order of the department authorizing the dissolution of such corporation;
- (i) A brief summary showing the manner in which the corporate debts and liabilities were disposed of or paid; and

(j) A complete itemized list of all of the corporate assets and property distributed to its shareholders, the name of each such shareholder, the amount distributed to each, and the date of distribution.

(Formerly: Acts 1933, c.40, s.154; Acts 1937, c.33, s.16.)

IC 28-1-9-14

Articles of dissolution; presentation to department and to secretary of state

Sec. 14. The articles of dissolution shall be executed in triplicate, in the form prescribed by the department, by the president or a vice-president and by the secretary or cashier of the corporation, and shall be verified by the oaths of the officers signing such articles, and shall be presented in triplicate to the department as (and) to the secretary of state, at their offices, as hereinafter provided, accompanied by an affidavit of the publisher of the newspaper wherein the notice of dissolution was published, as hereinbefore provided, as to the publication of such notice, and by the fees prescribed by law.

(Formerly: Acts 1933, c.40, s.155.)

IC 28-1-9-15

Articles of dissolution; approval by department

Sec. 15. After the articles of dissolution shall have been executed and before they are presented to the secretary of state, they shall first be presented to the department. If the department finds that the articles of dissolution conform to law, it shall approve such articles, and its approval shall be evidenced in the manner prescribed in IC 28-12-5.

(Formerly: Acts 1933, c.40, s.156.) As amended by P.L.263-1985, SEC.47; P.L.14-1992, SEC.78.

IC 28-1-9-16

Certificate of incorporators or articles of dissolution; approval by secretary of state; filing; certificate of dissolution

Sec. 16. Upon presentation of the certificate of the incorporators, as provided in section 1 of this chapter, or of the articles of dissolution and proof of publication, as provided in section 14 of this chapter, the secretary of state, if he finds that it or they conform to law, shall endorse his approval upon each of the triplicate copies of the certificate or articles, as the case may be, and, when all fees shall have been paid as required by law, shall file one (1) copy of the certificate or articles and the accompanying proof of publication in his office, and shall issue a certificate of dissolution to the corporation, and shall return the certificate of dissolution to the corporation, together with two (2) copies of the certificate of the incorporators or articles of dissolution, as the case may be, bearing the endorsement of his approval.

(Formerly: Acts 1933, c.40, s.157.) As amended by P.L.263-1985, SEC.48.

IC 28-1-9-17**Certificate of incorporators or articles of dissolution; recording**

Sec. 17. The corporation shall then file for record with the county recorder of the county or counties in which the articles of incorporation were or should have been recorded, as provided in IC 28-12-8, one (1) of the triplicate copies of the certificate of the incorporators or of the articles of dissolution bearing the endorsement of the approval of the secretary of state as provided in section 16 of this chapter.

(Formerly: Acts 1933, c.40, s.158.) As amended by P.L.263-1985, SEC.49; P.L.14-1992, SEC.79.

IC 28-1-9-18**Termination of corporate existence; existing liabilities**

Sec. 18. (a) Upon the issuance of the certificate of dissolution and the recording of the certificate of the incorporators or the articles of dissolution, as the case may be, as provided in section 17 of this chapter, the corporation shall be dissolved and its existence shall cease.

(b) The dissolution of any corporation in accordance with the provisions of this section shall not take away or impair any remedy against such corporation, its directors, officers, or shareholders for any liabilities incurred by the corporation previous to its dissolution if suit is brought and service of process is had, as provided by the laws of this state, within two (2) years after the date of such dissolution.

(Formerly: Acts 1933, c.40, s.159.) As amended by P.L.263-1985, SEC.50.

IC 28-1-9-19**Expired corporations; continuation for purposes of liquidation**

Sec. 19. Every corporation whose term of existence, as fixed by the articles of incorporation, has expired shall continue its corporate capacity for two (2) years for the purpose of liquidating its affairs and distributing its assets to its shareholders, after paying all of its liabilities, and for no other purpose. For such purpose, every such corporation shall use its corporate name and shall be capable of prosecuting and defending actions and suits at law or in equity.

(Formerly: Acts 1933, c.40, s.160.)

IC 28-1-9-20**Pending liquidations; acceptance of chapter**

Sec. 20. Any bank of discount and deposit, loan and trust and safe deposit company, or building and loan association organized under the provisions of any statute enacted prior to February 24, 1933, which is in voluntary liquidation on February 24, 1933, pursuant to any statute of this state may accept the provisions of this chapter and continue the liquidation of such corporation pursuant to the terms and provisions of this chapter.

(Formerly: Acts 1933, c.40, s.161.) As amended by P.L.263-1985,

SEC.51.